IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

RSA. No. 4335 of 2005
Date of Decision 16.03.2007

Smt. Kishni

...Appellant

Versus

Phool Singh

...Respondent

Coram: Hon'ble Mr. Justice Vinod K.Sharma.

Present: Mr.Naresh Kaushal, Advocate
for the appellant

Mr. BS Giri, Advocate for the respondent.

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Vinod K. Sharma, J. (Oral)

The present appeal has been filed against the judgment and decree passed by the learned trial court as confirmed by the District Judge, Kaithal.

The only ground raised in the present appeal is that the appellant had moved an application under Order 41 Rule 27 of the Code of Civil Procedure for adducing additional evidence. The said application was not disposed of by the learned lower appellate Court while disposing of the appeal. It is contended that the matter is required to be remitted back to the first appellate Court for decision on the application under Order 41 Rule 27 CPC and thereafter, to decide the appeal on merits in accordance with law.

In support of this contention, reliance is placed upon the judgment of this Court in the case of **Ashok Kumar vs. Surinder Kumar AIR 2005 (P & H) 263.**

This contention has not been controverted by the learned counsel for the respondent.

The point whether the appellate Court is required to decide the application under Order 41 Rule 27 of the Code of Civil Procedure prior to the disposal of the appeal is a question of law and accordingly, this appeal is accepted and the judgment and decree passed by the lower appellate court is set aside and the case is remitted back to the learned lower appellate Court for deciding the application moved by the appellant under Order 41 Rule 27 CPC in accordance with law and to decide the appeal thereafter on merits.

The parties through their counsel are directed to appear before the lower appellate Court on 20.4.2007.

March 16, 2007 **(Vinod K.Sharma)**
gsv **Judge**